IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2767 OF 2006

1. M/s. TRADE WELL, a Proprietorship firm, carrying on business at 95/1, Shiv Kailash Co-operative Housing Society Limited, Sion (West), Mumbai – 400 022.

2. Mr. Suniel K. Mehta, Proprietor of M/s. Trade Well, Adult, Indian Inhabitant, residing at 95/1, Shiv Kailash Co-operative Housing Society, Sion (West), Mumbai – 400 022. ... Petitioners

Versus

1. Indian Bank, a Body corporate consulted Under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, having its Head Office at 86, Rajaji Road, Chennai – 600 001 and Circle Office at Maker Tower "F", 18th Floor, Cuffe Parade, Mumbai 5 and one of its Branch Office at 11/12, Radha Krishna Niwas, N.C. Kelkar Road, Dadar (West), Mumbai – 400 028, through its Chief Manager, Mr. Vilas Vinayak Jinturkar.

2. The State of Maharashtra. ... Respondents

Mr. R.D. Soni with Mr. G.R. Kinkhabwalla i/b M/s. Ram & Co. for the petitioner (s).

Ms. Rathina Maravarman with Mr. P.G. Kinikar for respondent 1.

Mr. S.R. Borulkar, Public Prosecutor with Mr. M.S. Mhambrey, A.P.P. for the State.

ALOGN WITH

CRIMINAL WRIT PETITION NO.27 OF 2007

Mr. R.D. Soni with Mr. G.R. Kinkhabwalla i/b M/s. Ram & Co. for the petitioner (s).

Mr. Vishal Khanavkar & Kedar Dighe for respondent 1.

Mr. S.R. Borulkar, Public Prosecutor with Mr. M.S. Mhambrey, A.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.124 OF 2007

Mr. R.D. Soni with Mr. G.R. Kinkhabwalla i/b M/s. Ram & Co. for the petitioner (s).

Mr. Harinder Toor i/b Mr. N.K. Kamath for respondent 1.

Mr. S.R. Borulkar, Public Prosecutor with Mr. D.S. Mhaispurkar, A.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.343 OF 2007

Mr. Subhash Zha i/b M/s. Law Global for the petitioner(s)

Mr. S.R. Borulkar, Public Prosecutor with Ms. A.S. Pai, A.P.P. for the State.

Mr. A.H. Punwani for respondent 2.

CORAM : SMT. RANJANA DESAI, &
ANOOP V. MOHTA, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 13TH MARCH, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 2ND APRIL, 2007.

JUDGMENT:- (Smt. Ranjana Desai, J.)

1. The question which arises in these writ petitions is whether while dealing with a written request made by a secured creditor under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short, “the NPA Act”), the Chief Judicial Magistrate or the District Magistrate as the case may be is required to give notice to the borrower or any person who may be in possession of secured asset and give him a hearing.

2. For the sake of convenience we propose to deal with Criminal Writ Petition No.2767 of 2006. Our judgment in this petition on the main issue will be applicable to all petitions. We have heard the learned counsel appearing for the petitioners in Criminal Writ Petition Nos.2767 of 2006, 27 of 2007 and 124 of 2007. We have also heard Mr. Subhash Zha, the learned counsel appearing for the petitioners in Criminal Writ Petition No.343 of 2007. Senior counsel Mr. Dwarkadas and Mr. D'Vitre and the learned counsel Mr. J.P. Shah have also made submissions. We have heard them on their request, though the petitions in which they are appearing have been disposed of by separate orders.

3. We have also heard Mr. Borulkar, the learned Public Prosecutor who appears for the respondent-State. Mr. Toor, Ms. Rathina Maravarman and Mr. Punwani, who appear for the respondent-banks or financial institutions in these writ petitions have also made submissions. We have also heard Mr. Collabawalla.

4. We may briefly refer to the facts averred in Criminal Writ Petition No.2767 of 2006. Petitioner 1 is a proprietary concern of petitioner 2. Petitioner 3 is a guarantor for the debt of petitioners 1 and 2.

5. According to the petitioners, they were banking with respondent 1, the Indian Bank. Respondent 1 vide their sanction letter dated 24/1/2002 sanctioned open cash credit facility (stock and book debts) to the petitioners. Thereafter, the said facility was increased to Rs.50 lakhs on the terms and conditions set out in the sanction letter dated 27/8/2002. The petitioners mortgaged Flat No.1, Ground floor, Shiv Kailash Co-op. Housing Society, Plot No.95, Sion (West), Mumbai – 400 022, (for convenience, “the said flat”). The said flat is thus the secured asset of respondent 1.

6. According to the petitioners, respondent 1 filed Original Application No.127 of 2005 before the Debt Recovery Tribunal (for short, “the DRT”) against the petitioners. On 10/11/2006, the DRT passed a decree against the petitioners.

7. It appears that since the petitioners failed to repay the debt, respondent 1 issued a notice dated 27/8/2003 under section 13(2) of the NPA Act and called upon the petitioners to pay sum of Rs.62,47,919/- within sixty days from the date of the notice.

8. According to the petitioners, vide their letter dated 24/11/2005, they sent a reply to the said notice. It is the case of the petitioners that respondent 1 did not communicate to them the reasons for not accepting the said reply. According to the petitioners, therefore, in the light of the judgment of this court to which we shall soon advert, the notice dated 27/8/2003 must be quashed.

9. The case of the petitioners further is that respondent 1 filed an application in the Court of the Chief Metropolitan Magistrate, Esplanade, Mumbai, under section 14 of the NPA Act, praying for assistance to take possession of the said flat. By order dated 27/9/2006, the learned Chief Metropolitan Magistrate allowed the said application. The petitioners have challenged the said order in this writ petition.

10. Before we deal with the attack on the impugned order, we must note that affidavit has been filed by petitioner 2 reiterating that the notice sent by respondent 1 under section 13(2) of the NPA Act has been duly replied by the petitioners on 24/11/2005. However, respondent 1 has failed to comply with section 13(3A) of the NPA Act i.e. the reasons for not accepting the petitioners' reply have not been communicated to the petitioners. Affidavit in reply has been filed on behalf of respondent 1 by Mr. R. Ganesan, Asstt. Manager, Dadar (West) Branch. It is asserted in this affidavit that respondent 1 has not received any letter from the petitioners and, in any event, the said letter is sent after expiry of 60 days from the date of receipt of the notice under section 13(2).

11. Mr. Soni, the learned counsel for the petitioners first took us to section 14 of the NPA Act. Mr. Soni submitted that this section which speaks of the power of the Chief Metropolitan Magistrate / District Magistrate (for convenience, "the CMM/DM") to assist the secured creditor in taking possession of secured asset begins with the words "where the possession of secured assets is required to be taken by the secured creditor .....". Mr. Soni contended that it is implicit in this sentence that the CMM/DM has to apply his mind as to whether possession is required to be taken or not.

12. He then took us to Rule 8(3) of the Security Interest (Enforcement) Rules, 2002 (for short, "the said Rules") and contended that this Rule speaks about what the authorised officer is supposed to do if possession of immoveable property is actually taken. He submitted that therefore this provision contemplates a situation where the CMM/DM need not order taking possession. There could be cases where after due application of mind, it may appear to the CMM/DM that it is not necessary to take possession.

13. Mr. Soni submitted that while exercising jurisdiction under section 14, the CMM/DM must see whether there is compliance of section 13(3A). In fact, argues Mr. Soni, compliance of section 13 with all its sub-clauses is mandatory before power under section 14 can be invoked. Mr. Soni contended that section 13(3A) requires that if on receipt of the notice under sub-section (2), the borrower makes any representation or raises any

objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection, the reasons for non-acceptance of the representation or objection to the borrower.

14. In this connection, Mr. Soni took us to the judgment of the Supreme Court in ***Mardia Chemicals Limited v. Union of India, AIR 2004 SC 2371***. He pointed out that the Supreme Court has observed that the secured creditor must bear in mind the say of the borrower before process of recovery is initiated and so as to demonstrate that the reply of the borrower to the notice under section 13(2) of the NPA Act has been considered applying mind to it, the reasons however brief that may be for not accepting the objections if raised in the reply must be communicated to the borrower. Mr. Soni pointed out that the Supreme Court has also expressed that while resorting to such legislation it would be necessary to see that the persons aggrieved get a fair deal at the hands of those who have been vested with the powers to enforce drastic steps to make recovery. Mr. Soni submitted that therefore it is obligatory for the CMM/DM to find out whether the reply of the borrower has been considered by the secured creditor.

15. To emphasise this point, Mr. Soni took us to the judgment of the Nagpur Bench of this court in ***M.R. Gawai Enterprises v. Vidharbha Urban Co-opeartive Bank Limited & Anr. (2005) 1 BCR 276***. In that case, it was

argued that though the petitioner therein had filed objection to the notice under section 13(2) of the NPA Act, that objection was not considered by the secured creditor. No reasoned reply was given to the secured creditor. Mr. Soni pointed out that relying on the judgment of the Supreme Court in ***Mardia Chemicals' case (supra)***, the action under sub-section (4) of section 13 was quashed and the secured creditor was directed to consider the objections afresh and if the objections are rejected, communicate the rejection to the petitioner therein. Mr. Soni contended that therefore the importance of the reply or objections can hardly be underestimated. That is a minimum safeguard afforded to the debtor under this stringent statute. It's importance is emphasised by the Supreme Court in ***Mardia Chemicals' case (supra)***. Therefore, the CMM/DM must find out whether objection of the debtor is considered or not.

16. Mr. Soni then contended that section 14(3) states that no act of the CMM/DM in pursuance of this section shall be called in question in any court or before any authority. Therefore, it is all the more necessary for the CMM/DM before exercising power under section 14 to apply his mind as to whether possession is required to be taken. He must find out whether the property is in fact mortgaged or not, if there is a tenant whether tenancy is lawful or not. His attention must be focussed on such and other related aspects. Such a drastic power cannot be exercised without application of mind. The borrower or the person in possession must be heard. Mr. Soni contended that section 14 is not in aid of section 13(4). It is a separate

provision. Remedy of appeal is provided in section 17 against measures in section 13(4). It is not an appeal against power exercised under section 14.

17. Mr. Soni contended that it is true that the NPA Act is enacted keeping in view mounting levels of non-performing assets of banks and financial institutions and for reducing non-performing assets by adopting measures for recovery and reconstruction. Mr. Soni contended that nature of mischief sought to be prevented can never be the reason for putting a harsh interpretation on the provisions of the NPA Act. He submitted that because section 14 does not expressly provide for hearing, it cannot be said that the borrower or person in possession is not to be given hearing while taking possession.

18. He submitted that while acting under section 14, the CMM/DM is exercising judicial powers. At any rate, he is exercising quasi-judicial powers. Therefore, notice has to be read in section 14. Principles of natural justice cannot be ignored. He submitted that even while exercising administrative powers, principles of natural justice have to be followed. More so, while exercising judicial or quasi judicial power. In this connection, he relied on the judgments of the Supreme Court in ***State Bank of India v. Rajendra Kumar Singh & Ors. AIR 1969 SC 401, Amery Pharmaceuticals & Anr. v. State of Rajasthan, 11 (2001) CCR-8 SC, Rajesh Kumar & Ors. v. D.C.I.T. & Ors., JT 2006(10) SC 76, Smt. Maneka Gandhi v. Union of India and Anr. AIR***

1978 SC 597 and the judgment of this court in ***Bhikaji S/o. Tukaram Darode v. State of Maharashtra, 1994 (2) BCR 518***.

19. Mr. Soni contended that proceedings contemplated under section 14 are original proceedings. Hence, hearing provided under section 17, assuming objections can be raised to order passed under section 14 therein, is not sufficient. Hearing must be given while ordering possession being taken under section 14. Mr. Soni contended that assuming that the remedy of appeal is available to the petitioner, it is not sufficient. Mr. Soni further submitted that even if it is said that section 14 is in the nature of execution proceedings even in execution proceedings hearing is contemplated.

20. Mr. Soni then contended that by resorting to the NPA Act what is not permissible in law cannot be done. The NPA Act does not override the Transfer of Property Act. In this connection, Mr. Soni took us to the judgment of the Full Bench of this court in ***Anjali Patil v. Raghu Patil & Anr., AIR 1973 Bom. 75***. Mr. Soni contended that in most of the cases the borrower creates a simple mortgage. A simple mortgage consists of a personal obligation express or implied, to pay and the transfer of a right to cause the property to be sold. The right transferred to the mortgagee is not ownership right. The ownership and possession of the property continues with the mortgagor. Mr. Soni submitted that therefore, in case of simple mortgage, the mortgagor can even transfer possession. All that the mortgagee is entitled to is an obligation to pay. He can cause the property to be sold and recover his

money. But he cannot take possession because the ownership rights are not transferred. Mr. Soni submitted that if in case of simple mortgage, this is allowed to be done, it will mean changing or improving the contract. It will be against the provisions of the Transfer of Property Act.

21. Mr. Soni also relied on the judgment of the Supreme Court in ***Dev Raj Dogra & Ors. v. Gyan Chand Jain & Ors. (1981) 2 SCC 675***. Referring to Rule 95 and 96 of Order XXI of the Code of Civil Procedure, (for short, "the C.P.C."), he submitted that if tenants are in occupation of the mortgaged property, auction purchaser is not entitled to recover physical possession from the tenants. The auction purchaser is entitled to symbolic possession in terms of the provisions contained in Order XXI Rule 96 of the C.P.C. The question of validity or otherwise of the tenancy may have to be considered and determined in appropriate proceedings. It is clear therefore that if the tenants are in occupation of the property, without hearing them, the CMM/DM cannot order their dispossession. That will be contrary to law.

22. Mr. Soni submitted that the CMM/DM while acting under section 14 is exercising a judicial power. If it is held to be not a judicial power, it is at least a quasi judicial power and, therefore, application of mind to the material questions such as as to whether the asset is secured or not, whether there is a simple mortgage or not, whether the tenant is lawful or not, etc. is a must and for that, consistent with the principles of natural justice, a notice to the person in occupation is a must.

23. Mr. Soni also placed reliance on the judgment of the Supreme Court in ***SBP & Co. v. Patel Engineering Ltd. & Anr., (2005) 8 SCC 618***. In that case, the Supreme Court was considering the nature of power exercised by the Chief Justices of the High Courts or the Chief Justice of India under section 11(6) of the Arbitration & Conciliation Act, 1996 (for short, "the Arbitration Act"). Mr. Soni pointed out that the Supreme Court has observed in this judgment that normally any tribunal or authority conferred with a power to act under a statute, has the jurisdiction to satisfy itself that the conditions for the exercise of that power existed and that the case calls for the exercise of that power. The Supreme Court observed that such an adjudication relating to its own jurisdiction, which could be called as decision on jurisdictional facts, is not generally final, unless it is made so by the Act constituting the tribunal. The Supreme Court observed that sub-section (7) of section 11 has given a finality to the decisions taken by the Chief Justice or any person or institution designated by him in respect of matters falling under sub-sections (4), (5) and (6) of section 11 of the Arbitration Act. The Supreme Court observed that once a statute creates an authority, confers on it power to adjudicate and makes its decision final on matters to be decided by it, normally, such a decision cannot be said to be a purely administrative decision. It is really a decision on its own jurisdiction for the exercise of the power conferred by the statute or to perform the duties imposed by the statute. The Supreme Court further observed that unless the authority satisfies itself that the conditions for exercise of its power exist, it could not

accede to a request made to it for the exercise of the conferred power. The Supreme Court then observed that while exercising the power or performing the duty under section 11(6) of the Arbitration Act, the Chief Justice has to consider as to whether the conditions laid down by the section for the exercise of that power or for the performance of that duty exist and, therefore, while functioning under section 11(6) of the Arbitration Act, the Chief Justice or the person or institution designated by him, is bound to decide whether he has jurisdiction, whether there is an arbitration agreement, whether the applicant before him is a party, whether the conditions for exercise of the power have been fulfilled, and if an arbitrator is to be appointed, who is the fit person, in terms of the provision. The Supreme Court noted that section 11(7) of the Arbitration Act makes his decision on the matters entrusted to him, final. Mr. Soni contended that in this case also the CMM/DM has to decide whether the preliminary facts enabling him to exercise jurisdiction under section 14 of the NPA Act exist. This is more so, because sub-section (3) of section 14 of the NPA Act makes the order of the CMM/DM final. He submitted that the present case is clearly covered by the judgment of the Supreme Court in ***SBP & Co.***' ***s case (supra)***. Mr. Soni submitted that in the circumstances, this court should hold that the CMM/DM acting under section 14 of the NPA Act must give notice to the borrower or a third person who is in possession, as the case may be.

24. Learned counsel Mr. Joshi has adopted all arguments of Mr. Soni. He submitted that the CMM/DM acting under section 14 cannot do something

which a secured creditor cannot do. Under the NPA Act, a secured creditor is not given power to dispossess anybody. Possession can never be taken by dispossessing anybody. He referred to Order XXI, Rules 95 and 96 of the C.P.C. and contended that sale of the immoveable property in occupation of the judgment debtor takes place before taking possession. Thereafter auction purchaser applies to the court for taking possession. If there is a tenant, the auction purchaser takes symbolic possession. Then he may have to file a suit for possession. Mr. Joshi submitted that on similar analogy, borrower or third party cannot be dispossessed physically by a secured creditor via section 14 even before the lawfulness or otherwise of their possession is considered.

25. Mr. Joshi also referred to section 13(4)(d) which states that the secured creditor may require by notice in writing, from any person who has acquired any of the secured assets from the borrower and from whom any money may become due to the borrower, to pay him as much of the money as is sufficient to pay the secured debt. This according to Mr. Joshi is reflection of the principle that the secured creditor has a right only in sale proceeds. It is saleable interest which is mortgaged.

26. Mr. Joshi took us to Rules 8(3)(6) and (6-a), Rules 9(7), (8), (9) and (10) of the said Rules. He submitted that these Rules lay down the procedure for sale of secured asset. He submitted that Rule 8(3) begins with the words “in the event of possession of immoveable property is actually taken by the authorised officer”. He submitted that the words physical possession are

absent in the NPA Act or the said Rules and Rule 8(3) contemplates a situation where possession of immoveable property may not be taken. He pointed out that under Rule 8(6)(a), the notice which the authorised officer has to serve on the borrower must include the description of the immoveable property to be sold, including the details of the encumbrances known to the secured creditor. Rule 9(7) speaks of a case where the immoveable property is sold subject to any encumbrances. In such cases, the authorised officer may if he thinks fit allow the purchaser to deposit with him the money required to discharge the encumbrances. Under Sub-Rule 8 on such deposit for discharge of encumbrances, the authorised officer may issue notice to the person entitled to the money deposited and take steps to make the payment accordingly and under Sub-Rule 9, the authorised officer shall deliver the property to the purchaser free from encumbrances. Therefore, the person in occupation of secured asset as a tenant who has caused the encumbrance cannot be physically ousted. He submitted that the legislature has used the word “shall” in Rule 8(1). Therefore, that is the mandatory procedure. No other procedure can be followed for sale of immoveable secured asset. Mr. Joshi contended that if there is obstruction the secured creditor can approach the CMM/DM and the CMM/DM can only order that constructive possession of the property be taken.

27. Mr. Joshi contended that the secured creditor is bound by the contract and the NPA Act does not override the Transfer of Property Act. He referred to paragraph 71 of the judgment of the Supreme Court in ***Mardia Chemicals***'

case (supra) where the Supreme Court has held that the borrowers cannot be left remedy-less in case they have been wronged against or subjected to unfair treatment violating the terms and conditions of the contract. They can always plead in defence deficiencies on the part of the banks and financial institutions. Mr. Joshi contended that therefore, while exercising power under section 14, the CMM/DM must give hearing to the person in occupation of the property. He must, inter alia, find out whether there is a valid and subsisting mortgage which is not simple or equitable mortgage, whether the secured creditor requires the possession or not, etc. Mr. Joshi submitted that remedy of appeal under section 17 is only for curing an infringement of the person's right on account of the CMM/DM's order. It is not for prevention of infringement of the right. Remedy under section 17 is not an adequate remedy. Mr. Joshi submitted that in the circumstances, this court should direct the CMM/DM to give hearing to the persons who will be affected by his order and dispossessed. That will be in tune with the principles of natural justice.

28. Mr. Dwarkadas, the learned senior counsel pointed out that under section 14(3) of the NPA Act, no act of the CMM/DM done in pursuance of section 14 can be called in question in any court or before any authority. Under section 14(2), the word “may” is used twice. It is stated that the CMM/DM may take such steps or use such force as may in his opinion be necessary. Therefore, the CMM/DM has to apply his mind as to whether the possession is required to be taken and to all related questions. Mr.

Dwarkadas pointed out that under section 17(3) of the NPA Act, the DRT has to only consider whether the possession is required to be delivered or restored to the borrower. It does not speak about restoration of possession to a third party and therefore section 17 does not provide an alternative or efficacious remedy for a third party.

29. Mr. Dwarkadas submitted that that remedy under section 17 is not available to persons other than borrowers is clear from section 19. Section 19 states that if DRT on application made under section 17 or the Appellate Tribunal on an appeal preferred under section 18 holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of the NPA Act, it can direct the secured creditor to return such secured assets to the concerned borrower and the concerned borrower shall be entitled to payment of compensation. Therefore, there is no relief provided to a third party.

30. Mr. Dwarkadas contended that in ***Transcore's case (supra)***, the Supreme Court has in paragraph 54 clearly stated that section 13(4) of the NPA Act proceeds on the basis that the borrower, who is under disability, has failed to discharge his liability within the period prescribed under section 13 (2), which enables the secured creditor to take recourse to one or more of the measures namely, taking possession of the secured assets including the right to transfer by way of lease, assignment or sale for realising the secured assets. The NPA Act thus contemplates action against the borrower. In

Transcore's case (supra), the Supreme Court has discussed the provisions of the NPA Act in the context of the borrower. The NPA Act does not deal with third parties. Possession of third parties cannot be taken by adopting measures under section 13(4). Third party is not given notice under section 13(2). Taking possession from a third party in such a manner is not contemplated in the NPA Act nor has the Supreme Court said so in ***Transcore's case (supra)***. Mr. Dwarkadas contended that there is no privity of contract between a third party and the secured creditor. In such a situation, the third party cannot be dispossessed in this manner and in such cases writ petition is the remedy available to the third party.

31. Mr. D'Vitre submitted that under section 17, any person including a borrower aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor may make an application to the DRT. Assuming such a right of appeal is available, it is against the measures referred to in sub-section 4 of section 13. He submitted that objection can be raised only as regards the procedure adopted. Under section 17(3), third party rights cannot be decided. Order of restoration of possession to third party cannot be passed. Mr. D'Vitre submitted that the appeal provided in section 17(3) is an illusory appeal. In this connection he relied on the judgment of this court in ***Dr. Anil Tibrewala & Anr. v. Jammu & Kashmir Bank Ltd. & Ors., 2006(5) All MR 676***. He also relied on Full Bench judgment of the Calcutta High Court in ***Smt. Bimla Devi v. Chandan Mallick & Ors., AIR 1975, Cal. 80***.

32. Mr. D'Vitre submitted that if third parties are not given a hearing, great injustice may be caused. He submitted that if a third party has a prior registered agreement of sale in his favour and pursuant to that, he is in possession of the flat, in law, no subsequent documents can affect his rights to the said flat. Prior registered documents of title would override subsequent documents. Mr. D'Vitre submitted that section 48 of the Transfer of Property Act and section 47 of the Registration Act come to the aid of such a person. Mr. D'Vitre submitted that in such cases, writ petition is the only available and efficacious remedy and this court should not hesitate to give relief to such a person.

33. Mr. Zha, the learned counsel appearing for the petitioners in Criminal Writ Petition No.343 of 2007 adopted the arguments of Mr. Soni. He reiterated that though section 14 of the NPA Act does not provide for a notice to borrower or third parties, notice to them must be read into that section to secure ends of justice. He relied on the judgment of the Supreme Court in ***Mangilal v. State of Madhya Pradesh, (2004) 2 SCC 447***. In that case, the Supreme Court was, inter alia, considering whether while fixing the quantum of compensation, the accused should be heard. It was argued before the Supreme Court that section 357 of the Criminal Procedure Code (for short, "the Code") nowhere postulates grant of an opportunity to be heard. The Supreme Court observed that even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties, whose rights and interests are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statutes provides otherwise. Mr. Zha then relied on the judgment of the Supreme Court in ***State of Maharashtra & Ors. v. Jalgaon Municipal Council & Ors., (2003) 9 SCC 731*** where while considering the doctrine of natural justice, the Supreme Court observed that it is a fundamental principle of fair hearing incorporated in the doctrine of natural justice and as a rule of universal obligation that all administrative acts or decisions affecting rights of individuals must comply with the principles of natural justice and the person or persons sought to be affected adversely must be afforded not only an

opportunity of hearing but a fair opportunity of hearing. Mr. Zha contended that this observation would apply with equal or more force to the judicial powers exercised by the CMM/DM under section 14 of the NPA Act. He, therefore, submitted that this court should hold that a CMM/DM exercising powers under section 14 of the NPA Act should give notice of hearing to the borrowers or third parties, as the case may be.

34. Mr. Borulkar, the learned Public Prosecutor, who represents the State, submitted that section 14 of the NPA Act is in aid of section 13(4). Power under section 14 is purely a ministerial power. It is neither a judicial nor a quasi judicial power. Discretion which vests in the CMM/DM is only with regard to use of force or strength of force and not as regards adjudication of title. Since, section 14 does not contemplate adjudication, principles of natural justice need not be read into it. In this connection, he relied on ***Pu Myllai Hlychho and Ors. v. State of Hizaram & Ors, (2005) 2 SCC 92*** where termination of the membership of members from the council was challenged on the ground that they were not given notice and they were not heard and, therefore, there was a violation of principles of natural justice. The Supreme Court reaffirmed its earlier view that if the statute, expressly or by necessary implication, omits the application of the rules of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness. Mr. Borulkar also relied on the judgment of the Supreme Court in ***Ajit Kumar Nag v. General Manager, Indian Oil Corporation Ltd., Haldia & Ors., (2005) 7***

SCC 764. There the Supreme Court was considering dismissal of an employee of the Indian Oil Corporation without notice or inquiry. Mr. Borulkar pointed out that the Supreme Court has held in this case that the principles of natural justice are not rigid or immutable and, hence, they cannot be imprisoned in a strait jacket. Mr. Borulkar relying on this judgment contended that the object and the scheme of the NPA Act will have to be taken into consideration while deciding whether principles of natural justice are impliedly excluded. In this case, the exclusion is in consonance with the object of the NPA Act, submitted Mr. Borulkar.

35. Mr. Borulkar then contended that considering the proximity of the high officers mentioned in section 14 to authorities which provide force, the legislature has asked them to exercise this ministerial power. Mr. Borulkar, submitted that section 14(3) grants immunity to the actions of the CMM/DM. His action of making available police force to take possession cannot be questioned in court. This provision, according to Mr. Borulkar is akin to such provisions found in the Bombay Police Act, the Customs Act and such other statutes. It does not give finality to the actions but grants only immunity.

36. Mr. Borulkar submitted that in order to constitute a court in the strict sense of the term, it should have trappings of a judicial tribunal. It should have power to give a definite judgment which has finality. In this case, this attribute is absent and, therefore, it cannot be said that the CMM/DM is exercising judicial power. In this connection, Mr. Borulkar relied on ***Mukri***

Gopalan v. Cheppilat Aboobacker (1995) 5 SCC 5.

37. For the purposes of distinction between a `judicial' and `ministerial act' Mr. Borulkar relied on ***Jawal Uddin Ahmad v. Abu Salem Najmuddin & Anr. (2003) 4 SCC 257***. In that case, the Supreme Court has held that receiving an election petition presented under section 81 of the Representation of People Act on behalf of or for the High Court is a ministerial function. The Supreme Court held that a ministerial act is one which a person performs in a prescribed manner, in obedience to the mandate of a legal authority without regard to, or the exercise of, his own judgment upon the propriety of the act done. Mr. Borulkar contended that this observation is attracted to the present case. While acting under section 14, the CMM/DM has no discretion, he merely does a duty.

38. Mr. Borulkar also referred to the judgment of the Supreme Court in ***Mardia Chemicals and Transcore (supra)*** for highlighting the object of the NPA Act. Mr. Borulkar submitted that the legislature has on purpose excluded hearing to the borrower or third parties and this court should interpret section 14 in a manner which will further the object of the NPA Act rather than frustrate it.

39. Mr. Borulkar, however, accepted that in a given case of gross injustice, this court can entertain a writ petition and give relief to the affected party. But according to him, such a case would be an exceptional case. Every case

cannot be entertained by this court. As regards the scope of writ jurisdiction, Mr. Borulkar relied on the judgment of the Supreme Court in ***L. Chandra Kumar v. Union of India & Ors. (1997) 3 SCC 261.***

40. Mr. Borulkar further submitted that the judgment in ***SBP & Co.' case (supra)*** has no application to the facts of the present case. He submitted that the purpose and object of the NPA Act and the Arbitration Act are distinct and different. According to Mr. Borulkar, reliance placed on this judgment is misplaced.

41. Mr. Toor, the learned counsel for the respondent-bank in Criminal Writ Petition No.124 of 2007 contended that the NPA Act aims at protecting the secured creditor. The Recovery of Debts Due to Banks And Financial Institutions Act, 1993 (for short, "the DRT Act") did not provide any protection against languishing of securities of secured creditors. Therefore, under the NPA Act, the moment loan is granted, interest of the bank is created in the asset. The asset vests in the bank the moment loan is granted. Interest of the bank becomes absolute once there is a default committed by the borrower. Thereafter, opportunity is sought to be given to the borrower by issuing notice under section 13(2) to repay the loan. If the borrower does not repay, the secured creditor can take any of the measures set out in section 13 (4). The learned counsel contended that there is no adjudication provided in the NPA Act upto section 17. Adjudication starts only when appeal under section 17 is filed. In that, the DRT considers whether interest was created,

whether it became absolute or not, whether it became non-performing as per guidelines of Reserve Bank of India, whether reply was given to the borrower, etc.

42. Mr. Toor submitted that DRT, who deals with these appeals has wide powers under section 22 of the DRT Act and, therefore, all questions can be considered in the appeal.

43. Mr. Toor further contended that under section 14(3), the action taken by the CMM/DM is neither revisable nor appealable. This is a sure indication that it is ministerial.

44. He submitted that section 14 pertains only to compliance as regards possession. He pointed out that in section 17, the legislature has employed the words “from the date on which such measures had been taken”. Therefore, section 17 presupposes that measures under section 13(4) have already been taken. An appeal cannot be filed at all if these measures are not taken. Those measures, as section 13(4) says, are one or more of the measures stipulated in sub-sections 4(a) to (d). The choice of taking particular measures is with the secured creditor. The learned counsel submitted that section 14 is a facilitating section. It is in aid of section 13. The bank will follow the property in the hands of the person who is in possession.

45. Mr. Toor submitted that sections 31, 34 and 38 make it clear that while acting under section 14, the CMM/DM exercises ministerial power. He submitted that section 14(3) merely gives immunity to the CMM/DM. In this connection, he took us to the definition of the term “judicial act” found in Jowitts Dictionary of English Law, Second Edition, Vol.1, where after defining judicial act, it is stated that all persons concerned in the exercise of judicial functions are protected from the consequences of acts for which they would be liable if they arose out of proceedings which were simply administrative or ministerial.

46. Mr. Toor submitted that under section 34, no civil court shall have jurisdiction to entertain any proceedings in respect of any matter which DRT or the Appellate Tribunal is empowered to determine under the NPA Act and no injunction shall be granted by any court in respect of any action taken under the NPA Act and the DRT Act. He submitted that therefore assuming that under section 14, the CMM/DM exercises judicial power, it must be held that he cannot adjudicate upon issues which the DRT or Appellate Tribunal is empowered to determine.

47. Mr. Toor further submitted that section 35 of the NPA Act gives overriding effect to its provisions. Therefore, this Act overrides the provisions of the Transfer of Property Act or any other laws.

48. Mr. Toor pointed out that section 38 gives power to the Central

Government to make Rules. There is no provision enabling the Central Government to make Rules in respect of section 14 that is because the CMM/DM exercises ministerial power.

49. Mr. Toor then submitted that in ***Mardia Chemicals' case (supra)***, the Supreme Court has upheld the validity of the NPA Act. Section 14 is upheld after examining the NPA Act on the touchstone of Article 14. Principles of natural justice are part and parcel of Article 14. Hence, there can be no question of giving notice under section 14. That aspect cannot be examined now.

50. Mr. Toor contended that the provisions of the NPA Act have to be interpreted keeping in mind its background and when there is conflict between law and equity, it is the law which has to prevail. He further submitted that when a provision is unambiguous like section 14, literal construction must prevail. In this connection he relied on ***Raghunath Bareja & Anr. v. Punjab National Bank & Ors. 2006 (13) SCALE 511***.

51. Mr. Toor submitted that when alternative and efficacious remedy is provided under section 17, the petitioner cannot invoke writ jurisdiction of this court. In this connection, he relied on ***Punjab National Bank v. Krishna & Ors., AIR 2001 SC 3208***, where in the context of appeal provided under section 20 of the DRT Act, the Supreme Court has held that when remedy of appeal was available, the High Court should not have entertained the petition

under Article 227 of the Constitution of India.

52. Mr. Toor then relied on the judgment of the Supreme Court in ***Allahabad Bank, Calcutta, v. Radha Kniha Maity & Ors., AIR 1999 SC 3426*** to highlight the scope and powers of DRT. He submitted that the DRT's powers are plenary. In this judgment, the Supreme Court has held that the DRT can even go beyond the CPC and only fetter that is put on its power is to observe principles of natural justice.

53. Mr. Toor also referred to the judgment of the learned single judge of this Court (Mohite, J.) in ***Prashant Khushe v. State of Maharashtra & Anr., 2006(2) BCR (Cri.) 2*** where the learned single judge has observed that the requirement of natural justice has been expressly provided under section 13 of the NPA Act and once the rule of natural justice is followed by the procedure under section 13 of the NPA Act, no further notice is required to be given under section 14 of the NPA Act.

54. Mr. Toor also placed heavy reliance on the judgment of the Supreme Court in ***Transcore (supra)***. Mr. Toor submitted that the inescapable conclusion which follows in view of the above is that no notice is required to be given either to the borrower or to the third party by the CMM/DM while acting under section 14 of the NPA Act.

55. Learned counsel Mr. Colabawalla contended that in section 14, the legislature has used “may” as well as “shall”. It must necessarily have two distinct imports. In this connection, he relied on the judgment of the Supreme Court in ***M/s. Mahalaxmi Rice Mills & Ors. v. State of U.P. & Ors., AIR 1999 SC 147***. In that case, construction of sub-clause (3) of section 17(iii)(b) of the U.P. Krishi Utpadan Mandi Abhiniyam (25 of 1964) was involved. It reads as under :

> “(3) if the produce is purchased by the trader from another trader, the trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee to the Committee.”

56. The Supreme Court noted that the word used for the seller to realise market fee from his purchaser is “may” while the word used for the seller to pay the market fee to the Committee is “shall”. The Supreme Court observed that the employment of the said two monosyllables is of great jurisprudential import in the same clause dealing with two rights regarding the same burden must have two different imports. The Supreme Court observed that the legislative intendment can easily be discerned from the frame of the sub-clause that what is conferred on the seller is only an option to collect market fee from his purchaser but the seller has no such option and it is imperative for him to remit the fee to the Committee. In other words, the Market Committee is entitled to collect market fee from the seller irrespective of whether the seller has realised it from the purchaser or not. Mr. Colabawalla contended that applying this principle to sub-section (i) of section 14, while the

secured creditor has an option to make a request to the CMM/DM, the CMM/DM shall on such request being made to him, take possession of the asset and for securing compliance he may cause force to be used. It is imperative for the CMM/DM to secure compliance. He has no discretion.

57. Mr. Colabawalla further contended that the submission that appeal provided under section 17 is illusory has been dealt with by the Supreme Court in ***Mardia Chemical' s case (supra)***. He pointed out that in paragraph 55, contention of the petitioner that appeal under section 17 is illusory was noted. That submission was rejected by the Supreme Court. He pointed out that in paragraph 59, the Supreme Court has held that proceedings under section 17 are in fact not appellate proceedings. They are initial proceedings like filing of a suit. Therefore, all grievances can be voiced in that appeal and all documents can be produced there.

58. Mr. Colabawalla contended that there is enough indication in section 13 (3A) and Explanation to section 17 that a third party has no right at the stage of section 13(3A) that is at the stage of communication of reasons to the borrower to make an application to the DRT under sub-section (1) of section 17. While section 13(3A) gives a right only to the borrower to raise an objection and states that the secured creditor has to consider the objection within one week and communicate the non-acceptance if any to the borrower, the proviso to sub-section 3(A) says that the communication of reason shall not confer on the borrower, a right to prefer an application to DRT under

section 17 at the stage of communication of reasons. Section 17 gives a right of appeal to any person (including borrower). Explanation states that at the stage of communication of reasons, the person including the borrower shall not be entitled to make an application to DRT under sub-section 1 of section 17. Therefore, the legislature has ruled out even third persons' intervention upto section 17. Mr. Colabawalla submitted that while dealing with a request made by the bank or financial institution under section 14, the CMM/DM has only to consider whether secured asset is within his jurisdiction or not and whether notice under section 13(2) is given or not. Beyond that, he does not have to make any inquiry because he is merely doing a ministerial function.

59. Ms. Rathina Maravarman, the learned counsel appearing for the respondent bank in Criminal Writ Petition No.2767 of 2006 adopted the submissions advanced on behalf of the petitioners. She submitted that remedy of appeal under section 17 is available to the borrower as well as to the third parties. According to her, a full fledged hearing is available under section 19 of the NPA Act. The learned counsel urged that when efficacious and alternative remedy is available, a writ petition should not be entertained. The learned counsel relied on the judgment of the Supreme Court in ***T.C. Basappa v. Nagappa & Anr. 1955 SCC 250***. She submitted that it is wrong to say that appeals filed by third parties are not entertained or that third parties do not get any relief under section 17 of the NPA Act. The learned counsel drew our attention to judgments of the DRT where such appeals are entertained and in some cases relief is also given.

60. Mr. Punwani, the learned counsel appearing for respondent 2 in Writ Petition No.343 of 2007 adopted the arguments of the learned counsel appearing for the petitioners. He submitted that the writ jurisdiction of this court should be used sparingly and should not be exercised in matters arising out of the NPA Act. He relied on the judgment of the Rajasthan High Court in ***M/s. Aayush Par Overseas v. Chief Manager, UCO Bank & Ors. 2006(2) Bankers' Journal 896*** and the judgment of the Allahabad High Court in ***Vipin Kumar Gupta v. Branch Manager, Union Bank of India & Ors. (2006) 131 Comp. Cases 495 (All)***.

61. Mr. Vishal Khatavkar and Mr. Dighe, who appear for respondent 1 in Criminal Writ Petition No.27 of 2007 have submitted written submissions. We have carefully perused them.

62. Though in ***Transcore's case (supra),*** the Supreme Court was considering whether withdrawal of O.A. in terms of the first proviso to section 19(1) of the DRT Act is a condition precedent to taking recourse to the NPA Act, while dealing with this question, the Supreme Court observed that three points arise for determination. Out of the those three points, the point which is relevant for the present case is as follows :

> "Whether recourse to take possession of the secured assets of the borrower in terms of section 13(4) of the NPA Act comprehends the power to take actual possession of the immoveable property?

63. While dealing with the question raised before it and points formulated by it, the Supreme Court discussed the reasons for enactment of the NPA Act. It analysed the DRT Act, 1993 and the NPA Act. We shall briefly summarise what the Supreme Court has said in this judgment for in our opinion most of the arguments advanced before us are answered by the Supreme Court in this judgment. We may reproduce the reasons for enactment of the NPA Act as quoted by the Supreme Court. They read as under :

> "The NPA Act, 2002 is enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. The NPA Act enables the banks and financial institutions to realise long-term assets, manage problems of liquidity, asset liability mis-match and to improve recovery of debts by exercising powers to take possession of securities, sell them and thereby reduce non-performing assets by adopting measures for recovery and reconstruction. The NPA Act further provides for setting up of asset reconstruction companies which are empowered to take possession of secured assets of the borrower including the right to transfer by way of lease, assignment or sale. The said Act also empowers the said asset reconstruction companies to take over the management of the business of the borrower."

64. Following is the gist of the relevant portion of the Supreme Court judgment.

(a) The DRT Act did not provide for assignment of debts to securitisation companies. The secured assets could not be liquidated in time. The NPA Act was enacted to reduce mounting non-performing assets by empowering banks to liquidate the assets and secured interest.

(b) The NPA Act deals with crystallized liabilities.

(c) The NPA Act proceeds on the basis that the asset is created in favour of bank which could be assigned to the assets management company which steps into the shoes of the secured creditors.

(d) Section 13(2) proceeds on the basis that the borrower is under a liability and his account in the books of account of the bank is classified as sub-standard or doubtful or loss. The NPA Act comes into force only if these two conditions are satisfied.

(e) Since section 13(2) deals with liquidation of liability on the basis that the account of the borrower has become non-performing, there is no scope of any dispute regarding liability.

(f) The NPA Act does not deal with disputes between the secured creditors and the borrowers but it deals with the rights of the secured creditors interse.

(g) Section 13(1) and Section 13(2) of the NPA Act proceed on the basis that the security interest in the bank and financial institution needs to be enforced expeditiously without the intervention of the Court and that enforcement could take place by non-adjudicatory process. The NPA Act provides for recovery of possession by non-adjudicatory process.

(h) The NPA Act removes all fetters on the right of the secured creditor.

(i) Under section 17(2), the DRT is required to consider whether any of the measures referred to in section 13 (4) are in accordance with the provisions of the NPA Act and the Rules made thereunder.

(j) If while examining the application under section 17, the DRT comes to the conclusion that any of the

measures taken under section 13(4) are not in accordance with NPA Act, it shall direct the secured creditor to restore the possession to the borrower or restore management to the borrower.

(k) If the DRT declares that the recourse taken under section 13(4) is in accordance with the provisions of the NPA Act then notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to anyone or more of the measures as specified under section 13(4) to recover his secured debt.

(l) Section 17(4) shows that the secured creditor is free to take recourse to any one of the measures under section 13(4) notwithstanding anything contained in any other law for the time being in force, e.g. for the sake of argument if in a given case, the measures undertaken by the secured creditor under section 13 (4) come in conflict with the State land revenue law, then notwithstanding such conflict, the provision of section 13(4) shall override the local law.

(m) This position stands clarified by section 35 of the NPA Act which states that the provisions of the NPA Act shall override all other laws which are inconsistent with the NPA Act. Section 35 gives an overriding effect to the NPA Act over all other laws, if they are in consistent with it.

(n) The dichotomy between symbolic and physical possession does not find place in the NPA Act.

(o) Rule 8 of the said Rules deals with the sale of immoveable secured assets. Rule 8 deals with the stage anterior to the issuance of sale certificate and delivery of possession under Rule 9. Rule 9 relates to time of sale, issue of sale certificate and delivery of possession. Till the time of issuance of sale certificate, the authorised officer is like a court receiver under Order XL, Rule 1 of the CPC. The court receiver can take symbolic possession and in appropriate cases, he can take actual possession even prior to the decree. The authorised officer's powers are greater as security interest is already created in the bank. Hence, under Rule 8, he can take steps to preserve the secured asset till issuance

of the sale certificate under Rule 9. Rule 9(6) states that on confirmation of sale, if the terms of payment are complied with, the authorised officer shall issue a sale certificate in favour of the purchaser. Rule 9(9) states that the authorised officer shall deliver the property to the buyer free from all encumbrances known to the secured creditor or not known to the secured creditor. This scheme of the NPA Act therefore does not disclose any dichotomy between symbolic possession and physical possession.

(p) Since scheme of section 13(4) read with section 17(3) shows that if the borrower is dispossessed not in accordance with the provisions of the NPA Act, the DRT is entitled to restore status quo ante, it cannot be said that if possession is taken before confirmation of sale, the rights of the borrower to get the dispute adjudicated upon is defeated by the authorised officer taking possession.

(q) The disputes which are sought to be avoided by Rule 8 read with Rule 9 of the said Rules are those where third party interests are created overnight and in very many cases those third parties take up the defence of being a bonafide purchaser for value without notice.

65. In view of the above authoritative pronouncement of the Supreme Court, there can be no doubt that the moment loan is granted by a bank interest of the bank is created in the asset. It vests in the bank. In case of default, notice under section 13(2) is required to be given. If any reply is submitted by the borrower, the bank has to consider it and if it does not accept it, it has to communicate the reasons to the borrower. The communication of reasons does not give the borrower or any third person any right to appeal under section 17 at the stage of communication. The banks or the secured creditors' liability is crystallized. It is not open to debate. There is no scope for any dispute regarding liability. Section 13(1) and 13(2) proceed

on the basis that the security interest in the bank and financial institution needs to be enforced expeditiously without intervention of the court by non-adjudicatory process. Till application under section 17 is made, there is no adjudication of any kind.

66. If possession is given without resistance, there is no need of approaching the CMM/DM under section 14. If actual possession cannot be taken because there is resistance, it can be taken by delivering a possession notice and by affixing the possession notice on the outer door of the property as stated in Rule 8 of the said Rules. This is a step towards taking actual possession and is often referred to as symbolic possession. Even in cases where a notice is affixed on the outer door, the possession vests in the secured creditor because security interest is already created in the secured asset. The argument that taking physical possession of secured asset is not contemplated under the NPA Act must be rejected in view of the clear observation of the Supreme Court in ***Transcore's case*** that the dichotomy between symbolic and physical possession does not find place in the NPA Act. The contention based on Order XXI Rules 95 and 96 of the CPC that if tenants are in occupation of the mortgaged property, auction purchaser is not entitled to recover physical possession from the tenants; that auction purchaser is entitled to symbolic possession and that possession can be taken only after sale after applying to the court and therefore taking over such possession is illegal, must also fail in view of the gist of the observations of the Supreme Court quoted by us in sub-clauses (n), (o) and (p) of paragraph

62.

67. When the bank takes any measures under section 13(4), on account of failure of the borrower to repay the liability is already crystallized. Similarly when the secured creditor approaches the CMM/DM for assistance to take possession of the secured asset, the liability having been crystallized, there can be no adjudication about it at that stage. Possession has to be taken by non-adjudicatory process. There is no question of pointing out to the CMM/DM at that stage that the person who is to be dispossessed is a tenant, or that he has a prior registered sale deed or that in case of simple mortgage, ownership rights are not transferred; that the mortgagee is only entitled to an obligation to pay and, hence, possession cannot be taken or that such a course will improve or change the contract etc. Grievance that reasons for not accepting the objections were not communicated can also not be raised at that stage because consideration of reply is in the realm of adjudication which cannot be done under section 14. Besides as per proviso to section 13 (3-A) and explanation to section 17, non-communication of reasons to the borrower does not confer on the borrower or any person right to prefer an application under section 17 at the stage of communication. This is the scheme of the NPA Act. It is so framed to achieve its object. At first blush this may appear harsh. But it is not so. The borrower and the third party is not remedy-less. Remedy is provided in section 17 where appropriate relief can be given to them. It is after measures under section 13(4) are taken that an application under section 17 can be filed by a borrower or any person and in that

application, all grievances including the grievance that reasons were not communicated can be voiced. Prior to that, at no point of time any grievances can be raised. Section 17 offers an adequate remedy. We shall advert to section 17 a little later.

68. In any case, it is also held by the Supreme Court in ***Transcore's case (supra)***, that if the measures undertaken by the secured creditor come in conflict with any other law the provisions of section 13(4) override these provisions and that section 35 gives an overriding effect to the NPA Act.

69. We also find no substance in the submission that remedy of appeal/application provided under section 17 of the NPA Act is illusory. In this connection, we may usefully refer to the judgment of the Supreme Court in ***Mardia Chemicals' case (supra).*** In that case, the constitutional validity of the NPA Act was under challenge. It was argued that remedy before the DRT, under section 17 is illusory. The Supreme Court rejected this submission. The Supreme Court observed that proceedings under section 17 of the NPA Act are not appellate proceedings. They are, in fact, the initial action which is brought before a Forum as prescribed under the NPA Act raising grievance against the action or measures taken by one of the parties to the contract. It was further observed that it is the stage of initial proceedings like filing a suit in the civil court. The Supreme Court concluded that as a matter of fact proceedings under section 17 are in lieu of a civil suit which remedy is ordinarily available but for the bar under section 34 of the

NPA Act. The argument that it will not be possible to produce any documents there; that there objection can be taken only to procedural irregularities about measures taken under section 13(4) must also be rejected. In this connection, we may also refer to the judgment of the Supreme Court in ***Allahabad Bank's case (supra)***. In that case, the Supreme Court has after referring to its earlier judgment reiterated that the DRT can travel beyond the CPC and the only fetter that is put on its powers is to observe the principles of natural justice. The Supreme Court has further observed that the DRT can pass orders to secure the ends of justice. In view of these observations, it is not possible for us to restrict the width and amplitude of the DRT's powers.

70. It is also not possible for us to hold that remedy provided under section 17 is not available to a third party. This section begins with the words `Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of section 13'. In our opinion the words `Any person (including borrower)' cover third parties also. Under section 13(3A), the secured creditor is required to communicate to the borrower reasons for not accepting his objection to the notice under section 13(2) but the reasons so communicated does not confer any right on the borrower to make an application before the DRT under section 17. Explanation to section 17 states that communication of reasons to the borrower does not entitle the person (including borrower) to make an application to DRT under section 17(1) at the stage of communication. This supports our conclusion that even a third party can make an application under section 17. In fact Ms. Maravarman, the learned

counsel appearing for the respondent-bank has drawn our attention to the judgments of the DRT where rights of third parties are dealt with and relief is granted to them.

71. There is also no substance in the submission that no relief can be given to a third party because section 17(3) speaks only of restoration of possession of the secured asset to the borrower. Section 17(3) states that if the DRT comes to the conclusion that any of the measures stated in section 13(4), taken by the secured creditor are not in accordance with the NPA Act and the Rules made thereunder, it can restore possession of the secured assets to the borrower or restore the management of the secured asset to the borrower. Section 17(3) further goes on to say that DRT can pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13. Therefore, there is no reason to conclude that no orders can be passed in respect of third parties by DRT under section 17. Section 18 which provides for appeal to Appellate Tribunal also states that any person aggrieved, by any order made by DRT under section 17, may prefer an appeal to an Appellate Tribunal.

72. It is true that section 19 speaks only of right of borrower to receive compensation and costs. But from this, it cannot be inferred that third party cannot get appropriate relief. There is no provision under the NPA Act putting fetters on the DRTs powers particularly when in ***Allahabad Bank's case***

(supra), the Supreme Court has held that it can travel beyond the CPC and it can pass orders to secure ends of justice.

73. There is no doubt that a party who is likely to be adversely affected by any action must be given a hearing before the action is taken. It is submitted that while acting under section 14, the CMM/DM is exercising judicial power. It is submitted that while exercising judicial or quasi judicial powers, principles of natural justice must be followed. It is argued that even while exercising administrative powers, principles of natural justice must be followed and where a statute is silent in the interest of justice notice must be read into it. Several judgments of the Supreme Court have been cited before us in support of these submissions. Heavy reliance is placed on the judgment of the Supreme Court in ***Maneka Gandhi' s case (supra)***. None can dispute these well settled principles.

74. However, we cannot ignore the object of the NPA Act. We have already quoted the reasons for the enactment of the NPA Act. It is a stringent statute. It proceeds on the basis that liability of the borrower is crystallized. It seeks to take care of menace of mounting non-performing assets which if not checked would cripple the national economy by blocking public money. It seeks to set up assets reconstruction companies and empower them to take possession of secured assets. It provides for assignment of debts to securitisation companies which the DRT Act did not provide. The secured assets are sought to be liquidated in time. The basis of the NPA Act is

crystallised liability and enforcement of security interest without the intervention of the court. It only deals with disputes of secured creditors inter se and not between secured creditor and borrower.

75. Observations of the Supreme Court in ***Ajit Kumar Nag' s case (supra)*** though in the context of service law are very material. The Supreme Court observed that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a strait jacket. They must yield to and change with exigencies of situations and they must be confined within their limits and cannot be allowed to run wild. The Supreme Court quoted its observations in ***Charan Lal Sahu v. Union of India, (1990) 1 SCC 613*** that `To do a great right after all, it is permissible sometimes to do a little wrong'. The Supreme Court clarified that in its opinion the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential".

76. In this case, the Supreme Court also referred to its judgment in ***Union of India v. Tulsi Ram Patel (1985) 3 SCC 398*** where the Supreme Court was considering the validity of order dismissing civil servants in the context of second proviso to Article 311(2) of the Constitution of India. The Supreme Court observed in that case that in certain circumstances, application of principles of natural justice should be modified and even excluded. The Supreme Court further observed that both in England and in India, it is well

established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right could be excluded. The Supreme Court clarified that it could also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. The Supreme Court further observed that if legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori, so can a provision of the Constitution. We feel that the above observations of the Supreme Court are attracted to the present case.

77. In our opinion, to secure its object the NPA Act has by necessary implication ruled out giving hearing either to the borrower or third parties till the application is filed under section 17. As observed by the Supreme Court in ***Transcore' s case (supra)*** section 6 of the NPA Act inter alia states that the bank or financial institution may, if it considers appropriate give a notice of acquisition of financial assets by any securitisation company or reconstruction company to the borrower and to any other concerned person but they may or may not give notice to the borrower regarding acquisition of financial assets the reason being that assets are transferable overnight. Section 13(2) contemplates a notice to the borrower calling upon him to discharge his liabilities. Section 13(3A) requires the secured creditor to communicate to the borrower reasons for not accepting his representation or objection and proviso thereto states that such communication shall not confer right on the borrower

to make an application under section 17 at that stage. Section 14 with which we are concerned here does not contemplate any notice to the borrower or a third party. It is only section 17 which states that any person including borrower can make an application to DRT being aggrieved by any measure taken under section 13(4). Explanation to section 17 clarifies that reasons communicated to a borrower at the stage of communication will not confer on the person including borrower any right to make an application to DRT under section 17(1). Section 18 again confers right on any person aggrieved by an order of DRT under section 17 to file an appeal before the Appellate Tribunal against the said order. Therefore, third party was in the mind of the legislature when it enacted the NPA Act. Wherever necessary reference is made to third party. Nothing prevented the legislature from specifically making a provision in section 14 for notice to the borrower or third party. It purposely did not make provision for notice or hearing being given to the borrower or third party at the stage of section 14. Looking to the scheme of the NPA Act, we are of the opinion that notice or hearing to the borrower or third party is excluded at the stage of section 14 by necessary implication.

78. Though the validity fo the NPA Act is upheld and that cannot be in issue before us, we may refer to the observation of the Supreme Court in ***Pu Myllai' xase (supra)***. After referring to its judgment in ***A.K. Kraipak v. Union of India, (1969) 2 SCC 262***, the Supreme Court observed that if the statute, expressly or by necessary implication, omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the

ground of arbitrariness.

79. On behalf of the respondents, it was urged that the CMM/DM acting under section 14 is performing a ministerial function and hence it is not necessary to give a hearing to the affected parties as he cannot determine the rights of the parties. The petitioners countered this submission by stating that it is a judicial or quasi judicial act and hence hearing is a must. It is not necessary for us to go into all these arguments in view of our conclusion that Section 14 of the NPA Act by necessary implication rules out notice or hearing to the borrower or third party and looking to the object of the NPA Act, such a conclusion is inevitable and justified.

80. It was also argued that section 14(3) gives finality to order passed by the CMM/DM under section 14 and, therefore, it is necessary to hear parties who are likely to be adversely affected by it.

81. We find no substance in this submission. In this connection, it is necessary to have a look at section 14(2) and (3). It reads thus :

> *"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. -*
>
> *(1) x x x x x x x x x*
>
> *(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate of the District Magistrate may*

> *take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.*
>
> *(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."*

82. Sub-section (3) is preceded by sub-section (2) under which for securing compliance of sub-section (1), that is for taking possession, the CMM/DM can take such steps and use or cause to be used, such force, as may in his opinion, be necessary. Sub-section 3 grants immunity to the CMM/DM as regards steps taken by him or force allowed to be used by him for providing assistance for taking possession. Since as stated by us adjudication of rival claims is absent at that stage, there is no question of his dealing with rival claims and giving a reasoned judgment as regards the merits of the case and obviously there is no question of such a reasoning assuming finality. In any event, if a party has any grievance as regards contents of that order, his remedy would be to voice them in the application under section 17 before the DRT after measures under section 13(4) are taken.

83. We must also refer to the judgment of the Supreme Court in ***SBP & Co.***' ***case (supra)*** on which reliance is placed by Mr. Soni. In that case, while considering the nature of the power exercised by the Chief Justices of the High Courts or Chief Justice of India under section 11(6) of the Arbitration Act, the Supreme Court held that any tribunal conferred with a power to act under

a statute has a jurisdiction to satisfy itself whether the conditions for exercise of power existed. The Supreme Court further observed that once a statute creates an authority, confers power on it to adjudicate and makes its decision final, such a decision cannot be said to be purely administrative decision. The Chief Justice or the person designated by him is bound to decide whether he has jurisdiction, whether there is arbitration agreement, whether the conditions for the exercise of powers have been fulfilled, and if an arbitrator is appointed, whether he is a fit person. It was urged that even in this case, the CMM/DM's decision is final as per section 14(3) of the NPA Act. The CMM/DM must find out whether conditions for exercise of power exist or not and for that purpose, notice to borrower and third party is a must.

84. In our opinion, the petitioners cannot draw any support from ***SBP & Co.' case (supra)***. The scheme, purpose and object of the NPA Act and the Arbitration Act are different. Under Section 11(6) of the Arbitration Act, the conditions for the exercise of the power are clearly laid down. Adjudication is apparent from section 11(6) of the Arbitration Act. In fact, in ***SBP & Co.' case (supra),*** the Supreme Court has clearly stated that while exercising the power under section 11(6) of the Arbitration Act, the Chief Justice has to consider whether the conditions laid down by the section exist or not. Whereas, in section 11(6) of the Arbitration Act, the legislature has laid down conditions for exercise of the powers, no such conditions are found in section 14 of the NPA Act. In ***SBP & Co.' case (supra)***, the Supreme Court has clearly stated that section 11(6) of the Arbitration Act contemplates power to adjudicate. The

Supreme Court has clarified that adjudication is involved in the constitution of the arbitral tribunal and, therefore, the Chief Justice has to inquire whether the conditions for exercise of his power under section 11(6) of the Arbitration Act exist and only on being satisfied in that behalf, could he appoint an arbitrator or an arbitral tribunal on the basis of the request. So far as the NPA Act is concerned, adjudication is clearly excluded by the Supreme Court in ***Mardia Chemicals' case (supra)*** and in ***Transcore' case (supra)***. In our opinion, therefore, the petitioners cannot draw any support from the judgment in ***SBP & Co.'s case (supra)***.

85. In our opinion, at the time of passing order under section 14 of the NPA Act, the CMM/DM will have to consider only two aspects. He must find out whether the secured asset falls within his territorial jurisdiction and whether notice under section 13(2) of NPA Act is given or not. No adjudication of any kind is contemplated at that stage.

86. It was argued that inasmuch as an alternative and efficacious remedy of an application under section 17 of the NPA Act is provided, a writ petition pertaining to any grievances arising out of the NPA Act should not be entertained by the High Court in its writ jurisdiction. Judgment of the Supreme Court in ***Punjab National Bank' case (supra)*** has been relied upon. On the other hand, the learned counsel for the petitioners contended that there are no fetters on the powers of this court conferred upon it by Articles 226 and

227 of the Constitution of India and though alternative remedy is available, if by the time the party avails of it, great hardship and injustice is likely to be caused, in a given case, this court can pass appropriate orders to redress the grievance of such a party.

87. In ***Punjab National Bank' s case (supra)***, the Calcutta High Court had allowed the petition filed by the guarantor by holding that as the mortgaged property was situated in Chennai, the DRT had no territorial jurisdiction and, it could not have directed sale of mortgaged property. It held that the bank would be at liberty to proceed against the guarantor in appropriate forum. It is against the backdrop of these facts that the Supreme Court held that fast track procedure of appeal provided under section 20 cannot be allowed to be derailed by taking recourse to proceedings under Articles 226 and 227 of the Constitution. The Supreme Court clarified that though no provision of the DRT Act expressly ousts the jurisdiction of the High Court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under the constitutional provisions. The Supreme Court observed that the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the guarantor to take recourse to appeal mechanism provided under the DRT Act.

88. There can be no dispute about this proposition. Generally, such writ petitions should not be entertained and parties must be relegated to

alternative remedy available to them in law and, in fact, this course is being followed by this court. However, the Supreme Court has not ruled in the above judgment that even in an exceptional case of gravest injustice remedy of writ is not available to a party. For instance if without obtaining an order under section 14 of the NPA Act, with the help of police, a person is dispossessed, the High Court may have to entertain such a writ petition, protect the secured asset by appropriate conditions and relegate that person to DRT. Similarly if the High Court finds that the action taken by the bank or financial institution on the face of it cannot be sustained because it is hit by section 31 of the NPA Act, the High Court may entertain a writ petition. As done by the Nagpur Bench of this court in ***M.R. Gowai Enterprises' case (supra)***, a writ petition may have to be entertained if reasons for not accepting objections of the borrower to notice under section 13(2) are not communicated to the borrower. It will depend on the facts and circumstances of each case. Such cases would be exceptional and few and far between.

89. In this connection, we may refer to the judgment of the Supreme Court in ***L. Chandrakumar' case (supra)***. In that case, the Supreme Court has held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdiction is also part of the basic structure of the Constitution. However, in our opinion, ordinarily such petitions should not be entertained. Lot of care and circumspection must be exercised before deciding to entertain such a petition and if it is entertained parties must be relegated to appeal after

passing appropriate order of protection primarily ensuring that the secured asset is not frittered away, leaving adjudication and final order to the DRT.

90. Following conclusions emerge from the above discussion :

1. The bank or financial institution shall, before making an application under section 14 of the NPA Act, verify and confirm that notice under section 13(2) of the NPA Act is given and that the secured asset falls within the jurisdiction of CMM/DM before whom application under section 14 is made. The bank and financial institution shall also consider before approaching CMM/DM for an order under section 14 of the NPA Act, whether section 31 of the NPA Act excludes the application of sections 13 and 14 thereof to the case on hand.

2. CMM/DM acting under section 14 of the NPA Act is not required to give notice either to the borrower or to the 3rd party.

3. He has to only verify from the bank or financial institution whether notice under section 13(2) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. There is no adjudication of

any kind at that stage.

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under section 14 of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under section 14.

5. Remedy provided under section 17 of the NPA Act is available to the borrower as well as the third party.

6. Remedy provided under section 17 is an efficacious alternative remedy available to the third party as well as to the borrower where all grievances can be raised.

7. In view of the fact that efficacious alternative remedy is available to the borrower as well as to the third party, ordinarily, writ petition under Articles 226 and 227 of the Constitution of India should not be entertained.

8. In exceptional cases of gravest injustice, a writ petition could be entertained by this court.

9. Great care and caution must be exercised while

entertaining a writ petition because in a given case it may result in frustrating the object of the NPA Act.

10. Even if a writ petition is entertained, as far as possible, the parties should be relegated to the remedy provided under section 17 of the NPA Act before the DRT by passing an interim order which will protect the secured assets. Adjudication and final order should be left to the DRT as far as possible.

91. Having dealt with the main issue, we will now deal with the individual writ petitions.

92. We have already narrated facts of Criminal Writ Petition No.2767 of 2006. It was argued that since respondent 1 has not replied to the objections raised by the petitioners, in the light of the judgment of the Nagpur Bench in ***M.R. Gowai Enterprises' case (supra)***, this court should set aside the action initiated by respondent 1. Since this is not an admitted fact we are unable to do so. We are unable to go into disputed questions of fact. Admittedly, symbolic possession is taken by respondent 1 – Indian Bank on 16/11/2005. If the petitioners are so advised, they may file an application before the DRT within a period of four weeks from today where all questions including the question regarding reply can be raised. We continue the interim relief granted by us for four weeks from today. For further continuation of the interim relief,

the petitioners will have to approach the DRT. The DRT shall deal with the matter independently and in accordance with law. Criminal Writ Petition No.2767 of 2006 is disposed of in the aforestated terms.

93. We shall now turn to Criminal Writ Petition No.27 of 2007. Petitioner 1 therein is a partnership firm carrying on business at Singapur Building, Kalbadevi Road, Mumbai. Petitioners 2 to 5 are the partners of petitioner 1.

94. The petitioners were banking with respondent 1 - the UCO Bank. Respondent 1 granted cash credit facility for the sum of Rs.48.60 lacs to the petitioners. Petitioners 2 to 6 mortgaged Flat No.23 admeasuring 350 sq. ft. on the 2nd floor and terrace on 3rd floor situated at Kamla Niwas, Bajaj Road, Vile Parle (West), Mumbai – 400 056, with respondent 1 for the said cash credit facility. The said flat is thus a secured asset.

95. It appears to be the case of respondent 1 that the petitioners have failed to repay the loan. Hence, respondent 1 issued notice dated 27/10/2005 and 10/12/2005 under section 13(2) of the NPA Act and thereby called upon the petitioners to pay the sum of Rs.48,60,000/- within 60 days from the notice.

96. According to the petitioners, respondent 1 issued possession notice dated 15/1/2006 under section 13(4) of the NPA Act. Thereafter, respondent 1 made an application/request under section 14 of the NPA Act before the

CMM, Esplanade Court, Mumbai, requesting for assistance to take possession of the said flat. On 19/9/2006, the CMM allowed the said application. The petitioners applied for setting aside the said order. The CMM by his order dated 15/12/2006 rejected the said application. Hence, the petitioners have approached this court for setting aside orders dated 19/9/2006 and 15/12/2006.

97. Since symbolic possession is taken by respondent 1 – UCO Bank, if the petitioners desire to file an application under section 17 of the NPA Act, they may do so. The interim protection granted by this court shall continue to operate only for a period of four weeks from today. For further continuation of the interim relief, the parties will have to approach the DRT. The DRT shall deal with the matter independently and in accordance with law. Criminal Writ Petition No.27 of 2007 is disposed of in the aforestated terms.

98. We shall now refer to the facts of Criminal Writ Petition No.124 of 2007. Petitioner 1 therein is a proprietary concern of petitioner 2. Petitioner 3 is a guarantor for the debt of petitioners 1 and 2. The petitioners were banking with respondent 1-bank. Respondent 1 had sanctioned cash credit facility of Rs.19 lakhs, STPL facility of Rs.35 lakhs, WCTL facility of Rs.15.50 and Rs.13 lakhs to the petitioners. Respondent 1 also sanctioned facility of bank guarantee of Rs.10 lakhs and STC facility of Rs.5 lakhs.

99. It appears to be the case of respondent 1 that the petitioners have

created an equitable mortgage in favour of respondent 1 and Bungalow No.17, Basant Garden Co-operative Housing Society Limited, Next to Atur Park, V.N. Purav Road, Chembur, Mumbai and Unit No.108, 1st floor, Hiranandani Industrial Estate Onkar Premises Co-operative Society Ltd., Opp. Kanjurmarg Railway Station, Kanjur Marg, Mumbai ("for convenience, "the secured assets") have been mortgaged to respondent 1. Since the petitioners defaulted in repayment of the loan, respondent 1 issued notice dated 16/2/2005 under section 13(2) of the NPA Act calling upon the petitioners to pay an amount of Rs.80,28,271.14 which according to respondent 1 is due from the petitioners.

100. The petitioners sent a reply dated 24/2/2005 denying their liability. It appears that the objection raised therein were not accepted by respondent 1 - Bank of Maharashtra. According to the petitioners, respondent 1 has not communicated the reasons for not accepting the said reply within the period stipulated under the NPA Act.

101. The petitioners' case is that they have offered to give symbolic possession but respondent 1 has refused to take it. This is not denied by respondent 1 by filing affidavit. Admittedly, respondent 1 filed an application under section 14 of the NPA Act before the CMM, Esplanade Mumbai, for assistance to take possession. The said application was granted on 14/9/2006. Being aggrieved by the said order, the petitioners have approached this court.

102. In the circumstances of the case and considering that as regards point pertaining to communication of reasons for not accepting the petitioners' reply, there is a dispute, we are of the opinion that the parties must be relegated to the DRT where all disputed questions can be agitated. Mr. Toor, the learned counsel for the petitioners on instructions from Ms. Ashwini Kulkarni, the legal officer of Bank of Maharashtra states that the Bank of Maharashtra shall take symbolic possession of the secured assets within a period of one week from today. On such possession being taken, the petitioners shall file an application before the DRT if they so desire within four weeks from the date on which the bank takes symbolic possession. The petitioners shall maintain status quo as regards the secured assets till appropriate interim orders are passed by the DRT. The petitioners shall file usual undertakings in this court within one week from today stating that they shall not alienate, encumber or create any third party interest in the secured assets or any part thereof till DRT passes appropriate orders regarding interim reliefs. The DRT shall consider the application independently and in accordance with law. We make it clear that this order shall not come in the way of settlement talks, if any, which may be going on between the parties. Criminal Writ Petition No.124 of 2007 is disposed of in the aforestated terms.

103. We shall now turn to the facts of Criminal Writ Petition No.343 of 2007. The petitioners in this petition have obtained housing loan in respect of Flat No.1402, Divya Gunjan, Gaurav Garden, Kandivali (West), Mumbai, (for

convenience, “the said flat”). While petitioner 1 was granted loan of Rs.19,00,000/-, petitioner 2 was granted loan of Rs.5,00,000/- by respondent 2, LIC Housing Finance Limited. Thus, in respect of the said flat, total loan of Rs.24,00,000/- was granted to the petitioners by respondent 2.

104. It appears that the petitioners have created equitable mortgage in favour of respondent 2 by depositing relevant documents of the said flat with respondent 2. The petitioners failed to repay the loan. Hence, respondent 2 issued a notice under section 13(2) of the NPA Act calling upon the petitioners to pay a sum of Rs.19,55,544.78 together with further interest thereon from 31/8/2005.

105. It appears that respondent 2 made an application/request to the CMM, Mumbai, under section 14 of the NPA Act requesting for assistance to take possession of the said flat which is a secured asset. On 12/12/2006, the learned CMM granted the said application. The petitioners have challenged the said order in this petition. Admittedly symbolic possession of the said flat has been taken by respondent 2. In the circumstances, we direct that if the petitioners file any application under section 17 of the NPA Act to the DRT challenging the action taken by respondent 2, the DRT shall dispose it off independently and in accordance with law. If the petitioners decide to file an application they shall do so within four weeks from today. Respondent 2 shall maintain status-quo as of today for a period of four weeks from today. Needless to say that further appropriate orders will be passed by the DRT.

Criminal Writ Petition No.343 of 2007 is disposed of in the aforestated terms.

106. We make it clear that while disposing of the petitions, we have not expressed any opinion on the merits of any of the petitions and the interim reliefs are granted or continued in the peculiar circumstances of the individual cases and because the petitions have been pending for a considerable period. Prayers for continuation of interim relief if any, may also be considered independently and in accordance with law by the DRT. We also make it clear that all contentions raised in the petitions except those which we have rejected are kept open.

(SMT. RANJANA DESAI, J.)

(ANOOP V. MOHTA, J.)